

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1300. Living Shoreline Group 1 General Permit for Certain Living Shoreline Treatments Involving Tidal Wetlands (adding 4VAC20-1300-10 through 4VAC20-1300-50).**

Statutory Authority: § 28.2-104.1 of the Code of Virginia.

Effective Date: September 1, 2015.

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Summary:

This regulation establishes a general permit that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines. The regulation provides for the permitting processes for living shoreline treatments by establishing procedures and qualifications for the general permit and sets forth specific criteria and permit conditions.

CHAPTER 1300

LIVING SHORELINE GROUP 1 GENERAL PERMIT FOR CERTAIN LIVING SHORELINE TREATMENTS INVOLVING TIDAL WETLANDS

4VAC20-1300-10. Purpose.

The purpose of this general permit is to provide a streamlined permitting process as an incentive to encourage property owners to utilize a living shoreline approach as appropriate, manage shoreline erosion, and promote the planting and growth of tidal wetland vegetation to restore or enhance ecosystem services. The techniques and conditions contained in this general permit are designed to limit the applicability of the permit to situations where the projects are most likely to be successful, and so as to limit the potential for adverse impacts on the environment and adjoining or nearby properties.

Approval under this general permit constitutes the commission or local wetlands board authorization required in accordance with § 28.2-1306 of the Code of Virginia. This general permit shall not conflict with or obviate the need to comply with any other federal, state, or local permitting requirement or authorization governing the proposed activity.

4VAC20-1300-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Chairman" means the chairman of a local wetlands board or his designee.

"Commission" or "VMRC" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources or his designee.

"Fiber log" means biodegradable fibrous material often composed of coconut fiber that is formed into rolls of various lengths and thicknesses used for erosion control and as a growing medium.

"Fiber mat" means a biodegradable fibrous material woven mat often composed of coconut fiber that is formed into mats of various sizes and thicknesses used for erosion control and as a growing medium.

"Grazing protection" means temporary structures consisting of wooden stakes, string lines, netting, and metal cages intended to protect planted wetland vegetation and introduced ribbed mussels from predation.

"Joint Permit Application" means the current Joint Permit Application utilized by the U.S. Army Corps of Engineers, Virginia Marine Resources Commission, Department of Environmental Quality, and local wetlands boards to evaluate projects involving submerged lands, wetlands, and coastal primary sand dunes and beaches for permit review, and any abbreviated application developed specifically for this general permit.

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits; protects, restores, or enhances shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials.

"Ribbed mussels" means the Atlantic ribbed mussel (Geukensia demissa).

"Shell bags" means net bags of various sizes filled with oyster or clam shells used for erosion control and as a substrate for other organisms.

"Tidal wetlands" or "wetlands" means the jurisdictional area meeting the definition contained in § 28.2-1302 of the Code of Virginia.

"Wetlands board" or "board" means a local wetlands board created pursuant to § 28.2-1303 of the Code of Virginia.

"Wetlands vegetation" means the vegetative species listed in § 28.2-1302 of the Code of Virginia.

4VAC20-1300-30. Applicability and procedures.

A. This general permit shall authorize the placement of certain specified sand fill, fiber logs, fiber mats, shell bags, and temporary grazing protection in tidal wetlands, landward of mean low water, to improve the growing conditions for wetland vegetation. The establishment of oysters and ribbed mussels may be incorporated into the project design.

B. To qualify for this general permit the applicant must submit to VMRC a complete Joint Permit Application or special abbreviated application and any supplemental information deemed necessary by the commission or the applicable wetlands board chairman to fully evaluate the proposal. The commissioner will oversee administration of the provisions of the general permit.

VMRC will forward the application to the Norfolk District of the Corps of Engineers, the appropriate local wetlands board, and the Department of Environmental Quality.

C. The wetlands board and VMRC will review the application concurrently to determine whether:

1. The application is sufficiently complete to allow evaluation.
2. The project satisfactorily meets the general permit criteria.
3. The general permit process should be utilized.

If both the wetlands board chairman and the commission determine the proposal affirmatively satisfies all three requirements specified in subdivisions 1, 2, and 3 of this subsection, the commissioner shall issue the general permit. No public interest review or notification of adjoining property owners shall be required and there shall be no application processing fee or permit fee. In the event that no comment or request for additional information is received from a wetlands board chairman or designee within 21 days of being provided the application, it shall be assumed the wetlands board has no objection to the issuance of the general permit, and the commissioner may issue the permit.

Should either the wetlands board chairman or the commission determine that the proposal does not satisfy all three requirements specified in subdivisions 1, 2, and 3 of this subsection, the general permit process shall not be utilized; however, the application may be supplemented with additional information deemed necessary to qualify for the general permit, or the proposal could be reviewed in accordance with the standard provisions of the wetlands zoning ordinance contained in Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia. Issuance of the general permit does not obviate the requirement for the permittee to comply with all other applicable local, state, and federal laws and regulations, including those laws and regulations administered by the U.S. Army Corps of Engineers, the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia), erosion and sediment control ordinances, stormwater management programs, and the Virginia Water Protection Permit programs.

4VAC20-1300-40. Specific criteria.

A. The maximum fetch at the project site shall not exceed 1/2 mile in any shore angle direction. Coarse sand should be utilized for any required fill. At a minimum the sand shall contain less than 10% very fine material (passing a #100 sieve). The sand shall not be placed in a manner that raises the elevation of any existing wetland area above the elevation of jurisdictional tidal wetlands (1.5 times the mean tide range above mean low water).

B. Appropriate wetland vegetation shall be planted in all wetland areas on which sand is placed where the resulting substrate elevation is appropriate to support the growth of wetlands vegetation. If deemed necessary to improve wetland habitat or resiliency, existing wetlands vegetation may be filled provided the project does not result in a net loss in aerial coverage of wetlands vegetation. Appropriate wetlands vegetation includes only those species listed in the tidal wetlands ordinance (§ 28.2-1302 of the Code of Virginia) that are anticipated to survive at the project site elevation and normal salinity regime. The common reed, *Phragmites* sp., shall not typically be considered appropriate wetlands vegetation for planting purposes.

C. Fiber logs, fiber mats, and shell bags may be utilized within the jurisdictional tidal wetland area to create a sill or to otherwise support the growth of wetlands vegetation, provided they are not placed on existing vegetation and are not stacked to a height that exceeds mean high water. The bags, mats, and fiber logs shall be maintained and promptly removed should they become displaced or unexpectedly damaged. If available, appropriate biodegradable materials are encouraged. The replacement of failed fiber logs, mats, or shell bags in the same location shall be allowed without the need to receive additional authorization. Additional sand may be placed to replace any lost sand or to adjust for substrate settlement, provided the elevation of the originally proposed grade is not exceeded.

D. Temporary grazing protection may be utilized to protect wetlands vegetation and ribbed mussels until they become established. The protective structures shall be removed once the vegetation or mussels are established. Such grazing protection is encouraged and should be

considered in the project design. Any requested grazing protection shall be specified in the permit application.

E. The permittee agrees to notify the commission upon completion of the project and to provide a brief monitoring report at the end of the first full growing season following planting and after the second year of establishment. The monitoring shall be undertaken between June and September of each year and shall include at a minimum the permit number, representative photos of the site, and a brief statement concerning the success of the project. Additional documentation is encouraged to allow improved evaluation of the techniques utilized.

F. Any vegetated wetlands established under this general permit shall not be cut or harvested. Areas shall be replanted as necessary to ensure there is at least no net loss of wetland vegetation within the project area during the term of the permit. If necessary to promote the establishment of wetlands vegetation, additional sand may be placed to restore the originally proposed elevation grade.

G. Any measures taken to eradicate invasive species at the project site associated with the living shoreline activity, including Phragmites sp., shall be noted in the permit application or conducted in accordance with a plan evaluated and approved by the appropriate wetlands board or locality. Such plans shall include measures to revegetate the area with appropriate native wetlands vegetation.

H. All activities undertaken in accordance with the general permit are subject to the enforcement and penalty provisions contained in Article 4 (§ 28.2-1316 et seq.) of Chapter 13 of Title 28.2 of the Code of Virginia. Failure to comply with any criteria or condition of the general permit may constitute a violation of the permit.

4VAC20-1300-50. Permit conditions.

A. This permit grants no authority to the permittee to encroach on property rights, including riparian rights, of others.

B. The duly authorized agents of the commission and the applicable local government shall have the right to enter upon the premises at reasonable times for the purposes of inspecting the work authorized by the permit and to evaluate compliance with the terms and conditions of the permit. Although the general permit is issued by the commissioner, the applicable local wetlands board retains jurisdiction and may enforce violations and any nonconformance with the permit occurring within tidal wetlands.

C. The permittee shall comply with all applicable federal, state, and local laws, ordinances, and rules and regulations concerning the project, specifically including those related to the Corps of Engineers, water quality standards, erosion and sedimentation control, the Chesapeake Bay Preservation Act, the Stormwater Management Act, and the Virginia Water Protection Permit Program. The granting of this permit shall not relieve the permittee of the responsibility of obtaining any and all other permits or authorization for this project.

D. The permit shall not affect or interfere with the right vouchsafed to the people of Virginia concerning fowling and the catching of and taking of oysters and other shellfish in and from the waters not included within the terms of the permit.

E. The permittee shall, to the greatest extent practicable, minimize adverse impacts of the project on adjacent properties and wetlands and upon the natural resources of the Commonwealth.

F. The permit may be revoked at any time by the commission upon the failure of the permittee to comply with the terms and conditions hereof or at the will of the General Assembly of Virginia.

G. All structures authorized by this permit that are not maintained in good repair or that are displaced to areas not authorized shall be completely removed within 30 days after notification by the commission or its designated representatives.

H. The permittee agrees to indemnify and save harmless the Commonwealth of Virginia and any applicable locality from any liability arising from the establishment, operation, or maintenance of said project.

I. This general permit shall be retained by the permittee for the life of the project as evidence of authorization.

J. The project authorized by this general permit shall be completed within two years of the issuance of the permit. Upon proper request by the permittee, the permit may be extended to allow completion of the work.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form to access it through a hyperlink. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (4VAC20-1300)

[Tidewater Joint Permit Application \(JPA\) for Projects Involving Tidal Waters, Tidal Wetlands, and/or Dunes and Beaches in Virginia \(rev. 3/2014\)](#)

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